

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
MEMPHIS DIVISION**

BANKERS LIFE CASUALTY COMPANY,)	Civil Action No.
)	
)	
Plaintiff,)	
)	
v.)	BANKERS LIFE CASUALTY COMPANY’S PETITION FOR INTERPLEADER
)	
SHANTAI C. HARRIS, as Attorney-In- Fact for DIANNE SIMS, Deceased, YULONDA MARSHALL, BRITTANY MARSHALL-SIMS, ERIKA BRASWELL, HERITAGE MEMORIAL FUNDING LLC,)	
)	
Defendants.)	

COMES NOW the Petitioner, Bankers Life Casualty Company ("Petitioner" or "Bankers Life"), by and through its undersigned counsel, and for its Petition for Interpleader states:

THE PARTIES, JURISDICTION & VENUE

1. Bankers Life is a foreign insurance corporation doing business in the State of Tennessee on a continual basis at all times pertinent hereto.
2. Upon information and belief, Defendant Shantai C. Harris ("Harris") is a resident of Memphis, Shelby County, Tennessee, a county within this jurisdictional district and division.
3. Upon information and belief, Defendant Yulonda Marshall ("Marshall") is a resident of Pearl, Rankin County, Mississippi.
4. Upon information and belief, Defendant Brittany Marshall-Sims ("Marshall-Sims") is a resident of Memphis, Shelby County, Tennessee.
5. Upon information and belief, Defendant Erika Braswell ("Kenneth") is a resident of Memphis, Shelby County, Tennessee.

6. Upon information and belief, Defendant Heritage Memorial Funding LLC (“Heritage”) is a limited liability company incorporated in the state of Mississippi with its principal place of business in Tupelo, Mississippi.

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1335 because the life insurance proceeds sought to be paid into the Court exceed \$500.00 and diverse citizenship exists between at least two of the claimants.

8. Venue is proper in this Court because Defendants Harris, Marshall-Sims, and Braswell are believed to be residents of Shelby County, a county within this jurisdictional district and division.

FACTUAL ALLEGATIONS

9. On or about October 17, 2000, Dianne M. Sims (“the Insured”) was issued a Bankers Life Casualty Company policy with a face value of \$40,000 (“the Policy Proceeds”). The relevant policy number is 7363755 (“the Policy”). A true and accurate copy of the Policy is attached hereto. (Policy, Exh. 1).

10. Defendant Brittany Sims, the Insured’s granddaughter, was named as the original primary beneficiary and Defendant Yulonda Marshall, the Insured’s daughter, was named as the contingent beneficiary of the Policy pursuant to the Application for Life Insurance completed by the Insured on or about December 15, 2000. (Application, Exh. 2).

11. The Insured submitted a Change of Beneficiary on or about February 2, 2006 naming both Defendants Brittany Sims and Yulonda Marshall as first beneficiaries. (Change of Beneficiary, Exh. 3).

12. By letter dated June 21, 2011, Bankers Life acknowledged receipt and recording of the Insured’s Power of Attorney which was executed on or about June 6, 2011 and naming

Defendant Harris as the Insured's Agent. (6/21/11 Letter, Exh. 4 and Power of Attorney, Exh. 5).

13. Defendant Harris, as the attorney-in-fact and agent for the Insured, submitted a Policy Service Application on or about July 21, 2011, revoking the previous beneficiary designation and naming as primary beneficiaries Defendants Yulonda Marshall and Erika Braswell, the Insured's niece. (Policy Service Application, Exh. 6).

14. The Insured died on July 23, 2011.

15. On July 26, 2011, Defendant Braswell submitted a claim for the Policy Proceeds. (Beneficiary's Life Insurance Claim Form, Exh. 7).

16. By letter dated July 27, 2011, Defendant Heritage notified Bankers Life that it had an assignment of proceeds due under the Policy for payment in the amount of \$3,065.80. (7/27/11 Letter, Exh. 8).

17. On July 28, 2011, Defendant Marshall-Sims submitted a claim for the Policy Proceeds. (Beneficiary's Life Insurance Claim Form, Exh. 9).

18. On July 29, 2011, Defendant Marshall submitted a claim for the Policy Proceeds. (Beneficiary's Life Insurance Claim Form, Exh. 10).

19. By letter dated August 11, 2011, Defendant Harris threatened legal action against Bankers Life for failing to pay the Policy Proceeds to Braswell. (8/11/11 Letter, Exh. 11).

20. By letter dated August 15, 2011, Defendant Marshall-Sims requested Bankers Life investigate the beneficiary change, alleging that Harris took advantage of the Insured's failing health and her duties under the Power of Attorney to change the beneficiary such that it named her sister Braswell as a beneficiary. Marshall-Sims further indicated her belief that she is the rightful beneficiary of the Policy Proceeds. (8/15/11 Letter, Exh. 12).

21. By letter dated August 19, 2011, Defendant Marshall asked that Bankers Life withhold payment of the Policy Proceeds to Braswell pending the resolution of litigation, alleging that Harris fraudulently changed the beneficiary on the Policy and may have also forged the Insured's signature. (8/19/11 Letter, Exh. 13).

22. By letter dated September 8, 2011, Attorney Kevin Childress, as the representative of Defendants Marshall and Marshall-Sims, and alleging fraud committed by Defendant Harris, requested that Bankers Life bring an interpleader action in order to resolve the matter expeditiously. (9/8/2011 Letter, Exh. 14).

23. Defendants Braswell, Marshall, Marshall-Sims, and Heritage each seek the Policy Proceeds.

24. Since determining that the Insured was covered under the Policy, Bankers Life is and has been prepared to distribute the Policy Proceeds.

25. Bankers Life has at no time denied liability with respect to the Policy Proceeds which are due and payable under the Policy. Bankers Life has at all times admitted liability and has stood ready, able, and willing to make immediate payment to the party or parties entitled to payments.

26. Because of the adverse claims to the Policy Proceeds, Bankers Life is in the position of a stakeholder with respect to the Policy Proceeds.

27. As set forth in 28 U.S.C. § 1335, Bankers Life has in its custody a "policy of insurance, or other instrument of value or amount of \$500 or more" of which "[t]wo or more adverse claimants...are claiming or may claim to be entitled to such money or property."

28. Upon receipt of the Court's Notice of Judicial Assignment via Electronic Case Filing ("ECF"), Bankers Life will tender, pursuant to 28 U.S.C. § 1335(2), a check totaling

\$38,809.88, representing the face value plus any accrued interest, to the Clerk of the United States District Court for the Western District of Tennessee. It is requested that the Clerk of Court deposit said check into its register until the proper beneficiary or beneficiaries of the proceeds are determined.

29. Bankers Life is entitled to and requests an Order discharging it from liability as to the claims made (or to be made) against it by Braswell, Marshall, Marshall-Sims, Heritage, and Harris.

30. Bankers Life has been forced to incur costs and fees to interplead the Policy Proceeds through no fault of its own and should be allowed to recover its costs and fees from the Policy Proceeds.

PRAYER FOR RELIEF

WHEREFORE, Bankers Life Casualty Company prays:

(a) That the Court order the Clerk of the United States District Court for the Western District of Tennessee deposit the Policy Proceeds tendered upon receipt of the Court's Notice of Judicial Assignment via ECF into an interest-bearing account until further orders from the Court;

(b) Yulonda Marshall be ordered to appear and answer and to set up whatever claims she may have in and to the above-referenced life insurance benefits;

(c) Brittany Marshall-Sims be ordered to appear and answer and to set up whatever claims she may have in and to the above-referenced life insurance benefits;

(d) Erika Braswell be ordered to appear and answer and to set up whatever claims she may have in and to the above-referenced life insurance benefits;

(e) Heritage Memorial Funding LLC be ordered to appear and answer and to set up whatever claims it may have in and to the above-referenced life insurance benefits;

(f) Shantai C. Harris be ordered to appear and answer and to set up whatever claims she may have in and to the above-referenced life insurance benefits;

(g) The Court make such judgment as necessary to determine who is properly entitled to the life insurance benefits and direct the Clerk of the United States District Court for the Western District of Tennessee to release the life insurance benefits in accordance with that judgment;

(h) That the Court enjoin Yulonda Marshall, Brittany Marshall-Sims, Erika Braswell, Heritage Memorial Funding LLC, and Shantai C. Harris, and their respective agents, attorneys, representatives, heirs, executors, assigns, and all persons claiming through or under them, from instituting or pursuing any state or federal court action for the recovery of the Policy Proceeds and, upon final hearing, permanently enjoin and restrain Yulonda Marshall, Brittany Marshall-Sims, Erika Braswell, Heritage Memorial Funding LLC, and Shantai C. Harris, and their respective agents, attorneys, representatives, heirs, executors, assigns, and all persons claiming through or under them, from instituting or pursuing any state or federal court action for the recovery of the Policy Proceeds, or relating in any way to Bankers Life's actions with respect to the handling of this claim;

(i) That the Court dismiss Bankers Life as a party and discharge it from all further liability to any claimants to the life insurance benefits under the Policy relating to the death of the Insured, Dianne Sims;

(j) Bankers Life be allowed to recover its costs and fees incurred to Interplead this matter; and

(k) The Court take such other steps as necessary to facilitate justice and grant such additional relief as is right and proper in the premises.

Respectfully submitted this the 12th day of October, 2011.

s/Gary L. Howard

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